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Federal Communications Commission
Office of Secretary

December 10, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: Ex Parte Submission of Time Warner Communications Holdings, Inc. Regarding Telephone Number Portability, CC Docket 95-116

Dear Mr. Caton:

Transmitted herewith and filed on behalf of Time Warner Communications Holdings, Inc. are an original and two (2) copies of an ex parte presentation relating to Telephone Number Portability, CC Docket No. 95-116.

As shown in the attached date-stamped cover letter, this filing was originally made on December 5, 1996, but the cover letter inadvertently referenced an incorrect docket number. This re-filing is made to allow the filing to be placed in the correct docket.

The presentation has been made to the individual Commission staff members shown in the attached service list.

Very truly yours

Michael G. Jones

Michael G. Jones

Attachments

No. of Copies rec'd 0+3
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CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 10th day of December, 1996, copies of the foregoing "Time Warner Communications Holdings, Inc.'s Ex Parte Submission" were hand delivered to the persons listed on the attached service list.

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Acting Secretary
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Re: Ex Parte Submission of Time Warner Communications Holdings, Inc. Regarding Telephone Number Portability, CC Docket 96-116

Dear Mr. Caton:

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The presentation has been made to the individual Commission staff members shown in the attached service list.

Very truly yours

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Ex Parte Submission By Time Warner Communications Holdings, Inc. In Telephone Number Portability, CC Docket No. 95-116

Time Warner Communications Holdings, Inc. ("TWComm") hereby submits this written ex parte filing in the above-referenced number portability proceeding. This filing is intended to respond to the ex parte submissions made by the incumbent LECs ("ILECs") regarding the petitions for reconsideration of the First Report and Order[1] as well as the comments filed in response to the Further Notice of Proposed Rulemaking. Those ILEC filings have dealt primarily with the Commission's decision in the First Report and Order to effectively prohibit the use of Query on Release ("QOR") as part of a long term number portability solution. This filing accordingly primarily addresses those arguments. TWComm also addresses briefly BellSouth's requests for a delay in the implementation of number portability beyond the deadlines established in the First Report and Order and for pooling the costs of long term number portability.

A. The Commission Should Not Permit ILECs To Deploy QOR.

1. LRN With QOR Does Not Meet The Statutory Definition Of Number Portability.

The statutory definition of number portability requires that subscribers be able to retain their telephone numbers "without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[2] Congress therefore made the policy decision that a solution must not result in any impairment in quality, reliability or convenience when subscribers switch from one carrier to another. Recognizing this fact, the Commission adopted as its sixth criterion for long term number portability the requirement that the solution "not result in any degradation of service quality or network reliability when implemented."[3]

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1 See Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116 (released July 2, 1996) ("First Report and Order" or "Further Notice of Proposed Rulemaking").

2 47 U.S.C. § 153(30).

3 See First Report and Order at ¶ 48.

As the record in this proceeding abundantly demonstrates, QOR does not permit subscribers to retain their numbers when changing from one carrier to another without experiencing degraded service quality. Calls to ported numbers under QOR must undergo a series of signaling and routing preparations that result in materially longer post dial delay ("PDD") than is the case with calls made to non-ported numbers under QOR.[4] Moreover, as the Commission has apparently recognized, QOR also increases the likelihood of call blocking.[5] The ILECs have not and cannot refute these points.

As AT&T has correctly argued,[6] ILEC arguments that QOR results in little greater PDD than calls would under Location Routing Number ("LRN") are beside the point. The statutory definition of number portability requires that subscribers with ported and unported numbers not experience differences in service quality attributable to number portability. Under any solution, therefore, PDD should be compared for ported and unported numbers in a particular NXX. Under QOR, calls to unported numbers will not require database queries pursuant to the LRN protocol. Thus, the comparison should be between calls to ported and unported numbers under QOR. The difference in PDD in this case is significant.[7]

Moreover, ILEC assertions that PDD created by QOR is only experienced by calling parties rather than subscribers with ported numbers are also complete red herrings. First, regardless of who experiences the PDD, a marketing advantage will be created for any carrier that is able to claim (accurately under QOR) that it provides service demonstrably superior to its competitor's. Further, as TWComm explained in its Comments on the Petitions for Reconsideration, businesses that rely significantly on the receipt of

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4 See e.g. Comments of Time Warner Communications Holdings, Inc., CC Docket No. 95-116, September 27, 1996, at 3-5; ex parte filing of AT&T in CC Docket No. 95-116, October 29, 1996 (diagramming and describing the unnecessary functions performed under QOR when a call is made to a ported number); ex parte filing of MCI in CC Docket No. 95-116, October 28, 1996 (same).

5 See First Report and Order at ¶ 54.

6 See ex parte filing of AT&T in CC Docket No. 95-116, October 29, 1996.

7 AT&T estimates that the difference will be more than one second. See id.

customer calls (such as catalogues) will be especially sensitive to this marketing difference and will be unlikely to risk placing their telecommunications needs in the hands of new entrants that appear to offer degraded service.[8]

In sum, the material degradation in quality for subscribers with ported numbers means that LRN with QOR does not meet the statutory definition of number portability and therefore cannot be implemented by any LEC. Even if QOR created significant cost savings, which it does not appear to do, this would in no way change the analysis. As the Commission correctly concluded in the First Report and Order, the Communications Act does not allow QOR.[9]

2. Implementation Of QOR Is Bad Public Policy.

In addition to incorporating the terms of the statutory definition of number portability into the performance criteria, the Commission also incorporated the sound policy underlying the need for long term number portability. That policy is essentially that consumers will benefit more from local competition if CLECs are able to deliver service over their own independent networks than if they must rely on ILEC facilities. CLECs in the latter position are unable to design their networks in the most efficient manner. In essence, ILECs in such situations dictate network design to CLECs. Moreover, where a CLEC must rely on the incumbent's network, the ILEC retains the incentive and the ability to discriminate against its competitor in the provision of number portability. The Commission's criterion number four thus mandates that number portability "not require telecommunications carriers to rely on databases, other network facilities, or services provided by other telecommunications carriers in order to route calls to the proper termination point."[10]

As the Commission found in the First Report and Order, QOR forces CLECs to rely on network facilities and services provided by ILECs in order to route calls to the proper termination point.[11] This is so, regardless of whether the ILEC only incorporates QOR into its own network. Most of the ported numbers will change from ILEC service to CLECs and

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8 See Comments of Time Warner Communications Holdings, Inc., CC Docket No. 95-116, September 27, 1996, at 5.

9 See First Report and Order at ¶ 56.

10 Id. at ¶ 48.

11 See id. at ¶ 54.

virtually all calls will originate on the ILEC networks for the foreseeable future. Thus, the adoption of QOR by an ILEC means that almost all calls to ported numbers will experience the extra steps required by QOR regardless of whether the CLEC incorporates QOR into its own network.

QOR therefore requires CLECs to incorporate ILEC network inefficiencies into their own service delivery schemes. QOR also exposes CLECs and their customers to ILEC network failures. Moreover, under QOR, ILECs have the opportunity and the incentive to discriminate against services provided to CLECs. As the ILECs are no doubt aware, this result will make it far less likely that consumers will enjoy the benefits of genuine competition.

3. The Commission Should Reject ILEC Assertions That QOR Creates Material Cost Savings Over LRN By Itself.

As discussed above, cost savings introduced by QOR are irrelevant since LRN with QOR does not meet the statutory definition of number portability. But even assuming these purported cost savings were a legitimate subject for comment and debate in this proceeding, regulators must focus on the larger market efficiencies at stake when establishing number portability rules. Specifically, it is important to focus on the different kinds of efficiencies that might be gained under LRN with QOR or under LRN by itself.

First, any cost savings introduced by QOR are essentially static.[12] For example, if an ILEC were to save one million dollars per year from QOR, that amount would not increase over time and would not be replicated by other firms. Consumers could only realize the benefit of the one million dollars per year of cost savings. Moreover, any savings realized as a result of QOR will diminish as the number of ported telephone numbers in a particular NXX grows.

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12 See Brenner, S. and Mitchell, B., "Economic Issues in the Choice of Compensation Arrangements for Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers," attached to the Comments of the Cellular Telecommunications Industry Association in Interconnection Between Local Exchange Carriers and Commercial Mobile Service Providers, CC Docket No. 95-185, filed March 4, 1996 (compare generally the discussion of static efficiency beginning at page 21 with the discussion of dynamic efficiency beginning at page 39).

But cost savings introduced by independent facilities-based competition made possible by fully functional number portability would be dynamic. For example, CLECs might create a cost savings of only one thousand dollars in the first year by providing service more efficiently to some customers. However, that one thousand dollars would increase over time as more customers switch to the CLECs' services and the ILEC adopts the CLECs' more efficient practices. This pattern then creates ever-increasing, dynamic savings for consumers that should ultimately far exceed the one million dollars per year saved under QOR.

Dynamic efficiencies are much less likely to develop under QOR than under LRN without QOR. This is because, as explained above, QOR requires CLECs to rely on ILEC networks and services for the delivery of number portability. Any increased expense created by LRN without QOR is therefore similar to the investment required by equal access for long distance carriers. In both cases, consumers (end users will ultimately pay for number portability just as they ultimately paid for equal access) are asked to make an investment in establishing the preconditions for the entry of independent facilities-based competitors. In other words, consumers incur short term price increases, losses of static efficiencies, so that more efficient competitors can enter the market, introducing dynamic efficiencies. If the increased efficiencies in the long distance market since equal access are any indication, this is an investment that will produce significant returns in lower prices and innovation in the local market.

But it is not even clear that QOR introduces significant static efficiencies. As an initial matter, in considering the cost savings that the ILECs allege are created by QOR, it is important to keep in mind that the incumbents have a strong incentive to subvert and delay the number portability implementation process. The ILECs have nothing to gain from cooperation, especially since the RBOCs are no doubt convinced that they only need to provide interim number portability to meet the number portability element in the checklist for in-region, interLATA entry. It should therefore come as no surprise that the estimated cost savings attributed to QOR by the ILECs have increased over the past several months as the urgency of the ILEC cause has heightened.[13]

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13 As MCI has observed, Pacific Telesis' estimated cost savings resulting from QOR have increased from \$71 million to \$130 million, BellSouth's estimated savings increased from \$50 million to \$101.5 million and GTE's estimate has risen similarly. <u>See</u> <u>ex</u> <u>parte</u> filing of MCI in CC Docket No. 95-116, November 7, 1996.

TWComm lacks the resources to analyze independently all of the ILECs' claims of cost savings attributable to QOR. However, MCI and AT&T have ably analyzed the ILEC cost studies, to the extent that they are public.[14] MCI and AT&T have discovered that the ILEC cost studies include numerous assumptions and omissions designed to increase cost savings estimates.[15] The analyses provided by MCI and AT&T place considerable doubt on the reliability of the ILEC estimates. In light of the risks created by QOR, the fact that QOR may not even produce significant cost savings makes it clear that QOR should be prohibited. The Commission came to just this conclusion in the First Report and Order.[16] No information has been introduced that changes this analysis in any meaningful way.

4. The Commission Should Give Little Credence To Other Purported Benefits Of QOR.

Apparently realizing that unreliable estimates of cost savings cannot support the introduction of QOR, the ILECs have tried also to show that QOR will make the delivery of number portability more reliable. The basis for this assertion is that LRN by itself will require a possibly insupportable increase in the capacity of the signaling network for NXXs with ported numbers. QOR, the argument goes, will permit a more gradual increase in signaling capacity because it requires that only calls to ported numbers query the number portability databases.[17]

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14 Explanations of the estimated cost savings attributable to QOR by Nynex and BellSouth contain significant omissions due to the purportedly proprietary nature of the assumptions contained in those analyses. See ex parte filing of BellSouth in CC Docket No 95-116, October 22, 1996; ex parte filing of NYNEX in CC Docket No. 95-116, October 21, 1996. The fact that other carriers have not felt the need to make such assertions of confidentiality demonstrates the dubiousness of the claims. Indeed, these requests for confidential treatment appear to be another aspect of the carriers' attempts to gain acceptance of QOR with as little scrutiny as possible.

15 See ex parte filing of MCI in CC Docket No. 95-116, November 7, 1996; ex parte filing of AT&T in CC Docket No. 95-116, October 29, 1996.

16 See First Report and Order at ¶ 54.

17 See ex parte filing of Pacific Telesis in CC Docket No. 95-116, October 24, 1996.

However, as TWComm explained previously, the added complexity of QOR makes network failure more likely than LRN without QOR.[18] Further, MCI has demonstrated that, in planning for the increased signaling capacity, QOR forces engineers to guess what levels of competition will develop in a particular NXX while LRN allows engineers to plan in a more certain environment (i.e., one in which all calls will require database queries).[19] In short, as MCI has explained, it is not the increase in capacity that threatens network reliability so much as the inability to plan capacity increases based on speculative predictions of demand.[20] It is therefore far from clear that QOR increases rather than reduces network reliability.

B. The Commission Should Not Delay The Implementation Of Number Portability.

BellSouth has reiterated its request that the Commission extend by three months the deadline for deployment of number portability in those MSAs with fourth quarter 1997 and first quarter 1998 due dates.[21] This request is both unfounded and premature. First, in the First Report and Order, the Commission delegated to the Common Carrier Bureau Chief the authority to waive or stay any of the dates in the implementation schedule for a period of up to 9 months.[22] In order to obtain such a waiver, a carrier must demonstrate through substantial and credible evidence the basis for its contention that it is unable to comply with the Commission's deadlines.[23] BellSouth has not presented any evidence demonstrating that this procedure for establishing waivers is inappropriate in this context. Even if the general waiver requested by BellSouth were appropriate for some MSAs (there is no evidence that it necessarily will be), it is extremely unlikely that it will

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18 See Comments of Time Warner Communications Holdings, Inc. in CC Docket No. 95-116, September 27, 1996 at 3.

19 See ex parte filings of MCI in CC Docket No. 95-116, October 25, 1996 and October 28, 1996.

20 See id.

21 See ex parte filing of BellSouth, CC Docket No. 95-116, November 1, 1996.

22 See First Report and Order at ¶ 85.

23 See id.

be appropriate for all MSAs. In contrast, the waiver process established by the Commission permits a more targeted waiver approach. It ensures that only particular carriers in particular MSAs that are unable to meet the deadlines will be granted more time for compliance and that number portability will be implemented in all areas where it is feasible.

Moreover, BellSouth has not presented any evidence that it deserves a waiver at this time. BellSouth states that it needs more time to evaluate the additional load on the network, to fully test intercompany flows, to fully test LRN capability and to minimize service disruption.[24] But it is not clear at this time, a full 12 months before the first MSA deadline, that BellSouth will be unable to adequately perform these functions within the time prescribed in the First Report and Order. Nor is it clear that the results of the Chicago trial results will be unavailable in a timely manner, as BellSouth states that they might.[25] It is simply too early to assess the reliability of BellSouth's assertions. The Commission should therefore reject the BellSouth request.

C. The Commission Should Reject BellSouth's Proposal For Long Term Number Portability Cost Recovery.

BellSouth has also reiterated its request that the Commission pool long term number portability category one costs (number portability costs incurred by the industry as a whole) and category two costs (costs directly related to number portability incurred by individual LECs) and then recover the costs based on the "elemental access lines" scheme proposed by SBC.[26] TWComm has responded to this proposal in its comments and reply comments in response to the Commission's Further Notice of Proposed Rulemaking.[27] BellSouth does not seem to have presented any new arguments in support of its cost recovery proposal.

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24 See ex parte filing of BellSouth, CC Docket No. 95-116, November 1, 1996 at 4.

25 See id.

26 See ex parte filing of BellSouth, CC Docket No. 95-116, November 6, 1996 at 5-6.

27 See Comments of Time Warner Communications Holdings, Inc., CC Docket No. 95-116, August 16, 1996, at 7-12; Reply Comments of Time Warner Communications Holdings, Inc., CC Docket No. 95-116, September 16, 1996, at 2-12.

As already explained by TWComm, it is more efficient and equally fair to require a carrier to bear the category one costs that can be reliably attributed its actions. The same is true of requiring carriers to bear all of the category two costs they incur. In general, consumers will benefit far more if cost-causers are given the incentive to implement number portability in the most efficient manner possible. The pooling arrangement supported by BellSouth will reduce this incentive. It will therefore increase the overall cost of number portability without any corresponding benefit.

CERTIFICATE OF SERVICE

I, Catherine M. DeAngelis, do hereby certify that on this 5th day of December, 1996, copies of the foregoing "Time Warner Communications Holdings, Inc.'s Ex Parte Submission" were hand delivered to the persons listed on the attached service list.

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